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HB495: Capital Felony Case Amendments & HJR28: Joint Resolution Amending Rules Related to Capital Felony Cases

This document provides background on Utah's existing death penalty laws and analyzes proposed 2026 General Session legislation that amends processes and timelines related to capital cases. The legislation aims to streamline proceedings, reduce delays, and clarify procedures throughout the death penalty process.

Background

The time between sentencing and execution in the United States has grown significantly over recent decades, averaging 22.4 years in 2024 compared to roughly six years in 1984. In Utah, the three inmates currently on death row have waited an average of approximately 34 years. These prolonged timelines can increase both the financial burden on taxpayers and the emotional toll on victims' families.

Several factors have contributed to this national trend, including extensive appellate and postconviction review, improved indigent defense, advances in forensic technology that generate additional litigation, and difficulties obtaining lethal injection drugs.

Utah's Death Penalty Process

Eligibility

The death penalty is reserved exclusively for "aggravated murder," which requires the presence of at least one aggravating factor defined in statute, such as killing multiple victims, killing a child under 14, or targeting law enforcement. Defendants who were under 18 at the time of the offense or who are found to be intellectually disabled are exempt.

Bifurcated Trial

Capital proceedings occur in two phases. In the **guilt phase**, a jury determines by unanimous verdict whether the defendant committed aggravated murder. If convicted or upon a guilty plea, a **sentencing phase** follows in which the jury weighs aggravating factors against mitigating factors (e.g., limited criminal history). A death sentence requires a unanimous finding that the aggravating factors outweigh the mitigating factors.

Competency Proceedings

An inmate who is incompetent cannot be executed. If competency is questioned, the court may stay the execution and order a mental health examination. If found incompetent, the stay continues, the inmate receives treatment, and the court conducts follow-up hearings at least every 18 months. If competency is restored, the court notifies the Board of Pardons and Parole and issues a new execution warrant.

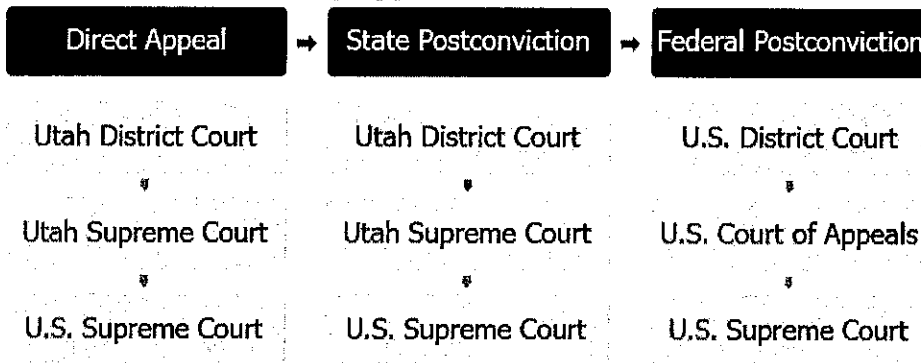
Appeals and Postconviction Review

A death sentence is subject to multiple levels of review:

- **Direct Appeal.** The Utah Supreme Court automatically reviews the case, examining the trial record for legal errors such as improper jury instructions or wrongly admitted evidence. Defendants may also petition the U.S. Supreme Court, though it accepts very few such cases.
- **State Postconviction Relief.** Within one year after direct appeals conclude, defendants may file a postconviction relief (PCR) petition in state district court raising issues outside the trial record, such as newly discovered evidence or claims of ineffective counsel. These petitions may be appealed to the Utah Supreme Court and then to the U.S. Supreme Court.
- **Federal Postconviction Review.** After state remedies are exhausted, defendants may file a federal habeas corpus petition arguing that their imprisonment violates federal constitutional rights. Federal district courts review state decisions deferentially, granting relief only when the state court clearly erred. Appeals may then proceed to the federal circuit court and ultimately to the U.S. Supreme Court.

Executions are typically stayed while appeals are pending—a process that can span decades. See **Figure 1** for a simplified illustration of the appeals process.

Figure 1: Death Penalty Appeals Process



Source: OLRGC analysis, 2026

Bill and Resolution Analysis

The tables below summarize key provisions of HB495 and HJR28 and are not intended to be comprehensive.

Table 1: Existing Law vs. Proposed Changes in HB495

Topic	Existing Law	HB495
Automatic Supreme Court Review	<ul style="list-style-type: none"> • Every death sentence triggers an automatic review by the Utah Supreme Court within 60 days after the trial court sends the record to the Utah Supreme Court, regardless of whether the defendant appeals. 	<ul style="list-style-type: none"> • Automatic review only happens when the defendant waives or fails to timely file an appeal. • The Utah Supreme Court must complete the review within 120 days without briefing, unless it identifies a potential basis to modify or vacate the sentence, in which case it may request briefing from the Attorney General. (Lines 238-258)
Prioritization of Capital Cases	<ul style="list-style-type: none"> • Automatic review of a capital case by the Utah Supreme Court has priority over all other cases in the 	<ul style="list-style-type: none"> • Establishes the priority that capital cases have over other cases as follows:

Topic	Existing Law	HB495
	Utah Supreme Court.	(1) automatic reviews take priority over all other Utah Supreme Court cases; (2) other capital appeals take priority over all non-capital felony cases before the Utah Supreme Court; (3) capital postconviction petitions take priority in the district court over all cases except active capital trials. (Lines 265-270)
Ineffective Assistance of Counsel (IAC) Claims	<ul style="list-style-type: none"> No restriction on when or where IAC claims may be raised in capital cases. Claims may be brought on direct appeal, during automatic review, or in postconviction proceedings. 	<ul style="list-style-type: none"> The Utah Supreme Court and district courts may not consider IAC claims during direct appeal or automatic review. All IAC claims must be raised in postconviction proceedings. (Lines 1285-1291; 1360-1361)
Intellectual Disability (ID) Determination	<ul style="list-style-type: none"> The U.S. Supreme Court has held that it is unconstitutional to impose the death penalty on an individual who is intellectually disabled. An ID claim can be raised at any time. If an ID claim is raised, the court orders a full examination by two experts. 	<ul style="list-style-type: none"> Before trial in a death penalty case, the court appoints a psychologist to conduct a prescreening IQ assessment. If the IQ is above 75 and the defendant presents no contrary evidence within 30 days or any extension granted by the court, no full examination is required, and the death penalty remains a sentencing option. If the IQ is 75 or below (or the defendant presents contrary evidence), the court may stay proceedings and must order a full examination. A defendant may waive prescreening if the waiver is knowing and voluntary but doing so waives the right to bring a claim asserting intellectual disability. A finding on an ID claim can be appealed by the prosecution. (Lines 561-612; 788-789)
Competency Proceedings	<ul style="list-style-type: none"> The U.S. Supreme Court has held that it is unconstitutional to execute an individual who cannot understand why they are being punished. A defendant can bring a petition to determine whether the defendant is competent to be executed. The district court can order the Department of Health and Human Services to examine the defendant. Examination reports on an inmate's 	<ul style="list-style-type: none"> Provides that a motion to examine a defendant that is filed less than 21 days before an execution is considered untimely and can only be considered if there is an affidavit from a licensed physician or psychologist and a good cause showing. Raises the requirements for a successive petition by requiring an affidavit from a licensed physician or psychologist.

Topic	Existing Law	HB495
	<p>competency to be executed are due within 60 days (extendable to 90).</p> <ul style="list-style-type: none"> If a defendant is found to be competent, a successive petition can be brought but it has to show changed circumstances and raise a significant question of competency. 	<ul style="list-style-type: none"> Shortens the examination report deadline to 30 days. Establishes the procedures for when an inmate is found to be competent for execution. <p>(Lines 434-437; 1017-1223)</p>
Postconviction Counsel & Fees	<ul style="list-style-type: none"> Postconviction counsel is appointed only upon request and a finding that the defendant cannot afford counsel, at a hearing scheduled at least 30 days before the death warrant is signed. Attorney fees are capped at \$125/hour (\$60,000 maximum); litigation expenses are capped at \$20,000. 	<ul style="list-style-type: none"> Within 30 days after the Utah Supreme Court affirms a death sentence and returns the case to the district court, the district court must automatically appoint qualified postconviction counsel—without determining whether the defendant is indigent. The Utah Supreme Court must maintain a roster of qualified counsel. Attorney fees are increased to \$250/hour (up to \$120,000); litigation expenses are increased to \$40,000. <p>(Lines 1386-1409; 1423-1433)</p>

Source: OLRGC analysis, 2026

Table 2: Existing Law vs. Proposed Changes in HJR28

Topic	Existing Law	HJR28
Remand for Ineffective Assistance of Counsel Claims	<ul style="list-style-type: none"> Rule 23B of the Utah Rules of Criminal Procedure allows an appellate court to remand any criminal case to the trial court for findings to help the appellate court determine whether there was ineffective assistance of counsel in the trial court. 	<ul style="list-style-type: none"> Rule 23B would no longer allow capital cases with a death sentence to be remanded to the trial court for ineffective assistance of counsel claims. This coordinates with the changes in HB495, which would require these claims to be brought in a postconviction petition for relief rather than a direct appeal. <p>(Lines 104-106)</p>
Stay of a Death Sentence	<ul style="list-style-type: none"> Rule 27 of the Utah Rules of Criminal Procedure provides when a stay for a death sentence is permitted. The Utah Code also contains provisions about when a stay may be granted for a death sentence. 	<ul style="list-style-type: none"> Rule 27 will contain all the requirements for a stay of a death sentence. Rule 27 would only allow for a stay of an execution on a petition for competency if there are circumstances beyond the court's control that prevent the court from ruling before the scheduled execution date. Rule 27 would specify when a temporary stay must be lifted. <p>(Lines 113-160)</p>